

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEBRASKA**

UNITED STATES OF AMERICA,)	CASE NO. 8:15CR109
)	
Plaintiff,)	
)	
vs.)	MEMORANDUM
)	AND ORDER
)	
GERARDO SANCHEZ-LOPEZ,)	
)	
Defendant.)	

This matter is before the Court on Filing No. 47, Petitioner's Second in Time Motion Pursuant to 28 U.S.C. § 2255 as a Result of a Newly Clarified Amendment ("second § 2255 motion"), submitted by the Defendant, Gerardo Sanchez-Lopez. In his second § 2255 motion, the Defendant asserts that he is allowed "to file a 'second in time' motion because no relief based on the amendment was available until the amendment took effect on November 1, 2015."

The Court notes that the Defendant previously filed his first § 2255 Motion (Filing No. 42) on May 12, 2016, and that motion was denied on June 23, 2016 (Filing Nos. 45, 46).

When a second § 2255 motion is filed:

A second or successive motion must be certified as provided in section 2244 by a panel of the appropriate court of appeals to contain—

(1) newly discovered evidence that, if proven and viewed in light of the evidence as a whole, would be sufficient to establish by clear and convincing evidence that no reasonable factfinder would have found the movant guilty of the offense; or

(2) a new rule of constitutional law, made retroactive to cases on collateral review by the Supreme Court, that was previously unavailable.

28 U.S.C. § 2255.

Therefore, the Defendant must proceed accordingly to seek certification from the Eighth Circuit Court of Appeals. Without the required certification from the Eighth Circuit, this Court cannot consider the merits of the Defendant's second § 2255 motion and the pending motion will be denied.

IT IS ORDERED:

1. Petitioner's Second in Time Motion Pursuant to 28 U.S.C. § 2255 as a Result of a Newly Clarified Amendment (Filing No.47) ("second § 2255 motion") submitted by the Defendant, Gerardo Sanchez-Lopez, is denied;
2. A separate Judgment will be issued; and
3. The Clerk is directed to mail a copy of this Memorandum and Order to the Defendant at his last known address.

DATED this 11th day of August, 2016.

BY THE COURT:

s/Laurie Smith Camp
Chief United States District Judge